

SUPREME COURT OF WISCONSIN

Marriage of May v. May

339 Wis. 2d 626 (2012) · Decided April 3, 2012

SUMMARY

The Wisconsin Supreme Court considers whether a stipulation and court order establishing a 33-month unmodifiable floor for child support payments is enforceable. The court holds that the agreement is enforceable because the parties entered it freely and knowingly, it was fair and equitable, and no unforeseen circumstances adversely affecting the children's best interests warranted relief.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Patience Drake Roggensack, J.; Abrahamson; Bradley; Roggensack
JURISDICTION	Wisconsin
DECIDED	April 3, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Michael May appealed a Wisconsin circuit court order enforcing a stipulated and court-ordered 33-month minimum child-support obligation. The Wisconsin Court of Appeals certified the appeal to the Wisconsin Supreme Court under Wis. Stat. § 809.61, and the Supreme Court accepted certification.
STANDARD OF REVIEW	Whether equitable estoppel may be applied to an uncontested set of facts is reviewed independently as a question of law. Whether the elements of estoppel are satisfied based on facts found by the circuit court is reviewed as a matter of law. The decision to grant equitable relief through estoppel is reviewed for an erroneous exercise of discretion; the decision is affirmed when the circuit court examined the relevant facts, applied the proper legal standard, used a demonstrated rational process, and reached a reasonable conclusion.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential.
PARTIES	Michael May v. Suzanne May

TOPICS

child support

family law procedure

remedies

appellate procedure

standard of review

PRACTICE AREAS

family law

child support

equitable estoppel

appellate procedure

QUESTIONS PRESENTED

1. Whether a stipulated and court-ordered 33-month unmodifiable floor on child-support payments violates public policy.
2. Whether equitable estoppel may preclude a parent from seeking modification of a child-support obligation incorporated into a court order.
3. Whether the circuit court erroneously exercised its discretion by enforcing the stipulation and applying equitable estoppel.

HOLDINGS

1. An unmodifiable floor on child-support payments that is limited in duration is not per se contrary to public policy. A limited-duration floor may be enforceable if it does not interfere with the children's best interests and otherwise satisfies the requirements governing stipulated support orders.
2. The Mays' 33-month unmodifiable child-support floor was enforceable because the parties entered into it freely and knowingly, the overall agreement was fair and equitable, and the agreement was not illegal or contrary to public policy.
3. The circuit court properly applied equitable estoppel to preclude Michael from challenging the stipulated child-support floor during the 33-month period.

KEY QUOTATIONS

“First, ceilings on child support payments are presumed to be invalid.” (at 644-645)

“Second, an unmodifiable floor on child support payments that is not limited in duration, e.g., Krieman, 214 Wis. 2d at 178, or that has an excessively long duration, e.g., Wood, 299 Wis. 2d 470, ¶¶ 12-14, may violate public policy.” (at 644-645)

“Third, where the parties to a child support order have entered into a stipulation in regard to child support for a limited period of time that the court has adopted, courts will attempt to give effect to the parties' intentions where the stipulation was entered into freely and knowingly, was fair and equitable when entered into, and is not illegal or violative of public policy.” (at 644-645)

FACTUAL BACKGROUND

Michael and Suzanne May divorced in Illinois after having two children. Their later Wisconsin stipulation, entered when Michael was working part-time and earning approximately \$11 per hour, required Michael to pay \$1,203 per month in child support as a minimum for 33 months and prohibited him from filing for a reduction during that period. In exchange, Suzanne assumed all child-care costs and the parties modified other support-related obligations, including arrearages. Michael later sought a reduction after employment changes, but the record showed that he had returned to employment earning approximately \$72,000 per year and had failed to report that income as required by prior orders. The circuit court found the agreement freely and knowingly made,

fair and equitable, and not subject to relief based on unforeseen circumstances affecting the children's best interests.

PROCEDURAL HISTORY

The parties' Illinois divorce judgment incorporated their marital settlement agreement and child-support provisions. After registering the judgment in Wisconsin, Michael repeatedly sought modification of his support obligations. In January 2008, the Dane County Circuit Court entered an order incorporating a stipulation requiring Michael to pay at least \$1,203 per month for 33 months and prohibiting him from seeking a reduction during that period. In September 2009, the circuit court denied Michael's request to reduce support, held him equitably estopped from challenging the stipulation, and held him in contempt for violating related support obligations. The Court of Appeals certified the appeal to the Supreme Court of Wisconsin.

DISPOSITION

affirmed

CASES CITED

- *Honore v. Honore*, 149 Wis. 2d 512, 439 N.W.2d 827 (Ct. App. 1989)
- *Frisch v. Henrichs*, 2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85
- *Bliwas v. Bliwas*, 47 Wis. 2d 635, 178 N.W.2d 35 (1970)
- *Severson v. Severson*, 71 Wis. 2d 382, 238 N.W.2d 116 (1976)
- *Rintelman v. Rintelman*, 118 Wis. 2d 587, 348 N.W.2d 498 (1984)
- *Ondrasek v. Tenneson*, 158 Wis. 2d 690, 462 N.W.2d 915 (Ct. App. 1990)
- *Wood v. Propeck*, 2007 WI App 24, 299 Wis. 2d 470, 728 N.W.2d 757
- *Krieman v. Goldberg*, 214 Wis. 2d 163, 571 N.W.2d 425 (Ct. App. 1997)
- *Jalovec v. Jalovec*, 2007 WI App 206, 305 Wis. 2d 467, 739 N.W.2d 834
- *Dovi v. Dovi*, 245 Wis. 50, 13 N.W.2d 585 (1944)
- *King v. King*, 224 Wis. 2d 235, 590 N.W.2d 480 (1999)
- *Randy A.J. v. Norma I.J.*, 2004 WI 41, 270 Wis. 2d 384, 677 N.W.2d 630
- *Affordable Erecting, Inc. v. Neosho Trompler, Inc.*, 2006 WI 67, 291 Wis. 2d 259, 715 N.W.2d 620
- *Miller v. Hanover Insurance Co.*, 2010 WI 75, 326 Wis. 2d 640, 785 N.W.2d 493
- *May v. May*, No. 2010AP177, 2011 WL 51579 (Wis. Ct. App. Jan. 6, 2011)

OPINION

ROGGENSACK, J.

PATIENCE DRAKE ROGGENSACK, J. ¶ 1. This case is before the court on certification by the court of *630appeals, pursuant to Wis. Stat. § 809.61 (2007-08).¹ The certified question is whether a stipulation and order establishing a 33-month unmodifiable floor for child support payments is enforceable. ¶ 2.

The circuit court for Dane County concluded that the order was enforceable when Michael May (Michael), the payor spouse, sought to reduce his child support payments to his former wife, Suzanne May (Suzanne), a little more than one year after entry of the order.

On Michael's appeal from the circuit court's order, the court of appeals certified the appeal to us because existing case law could be read as conflicting and because the court of appeals concluded that there existed a need for clarification of the proper legal standard upon which to evaluate unmodifiable floors for child support payments. ¶ 3.

We conclude that the Mays' stipulation and order for child support is enforceable. The parties freely and knowingly entered into the stipulation at issue, and the terms of the stipulation were fair and equitable to the parties. Furthermore, the agreement is not contrary to public policy because the circuit court retains its equitable power to consider circumstances in existence when the stipulation was challenged that were unforeseen by the parties when they entered into the agreement if those circumstances adversely affect the best interests of the children.

Michael has not demonstrated the existence of such circumstances. Accordingly, we affirm the decision of the circuit court. I. BACKGROUND ¶ 4. Michael and Suzanne May were married on November 9, 1996. During the couple's almost nine *631years of marriage, they had two children, N.N.M. in 1998 and J.J.M. in 2002.

In mid-2005, Suzanne petitioned for divorce in the circuit court for Will County, Illinois, and on October 25, 2005, that court issued a judgment dissolving the Mays' marriage. The divorce judgment incorporated the parties' Marital Settlement Agreement and Joint Parenting Agreement, in which the couple stipulated to shared custody of the children, as well as child support payments from Michael to Suzanne. ¶ 5.

At the time of the stipulation, Michael was unemployed, having recently lost his job as a packaging engineer at Molex, Inc. Because Michael was unemployed at that time, the parties agreed that his child support payments would be \$444.44 per month, in addition to certain past due payments to be made soon after entry of the judgment of divorce, as well as costs for daycare and extracurricular activities for the children.

As part of the stipulation, Michael was required to inform Suzanne of any changes in his employment, at which point his support obligations would be recalculated. The stipulation also provided that Michael was responsible for 50 percent of the children's medical, dental, and vision insurance premiums until he became reemployed, after which he would be responsible for 100 percent of such premiums. ¶ 6.

On September 25, 2006, Michael registered the Illinois court's judgment in the Dane County circuit court and moved the Wisconsin court to modify the judgment of divorce. Michael sought modifications to his obligations for child support, insurance premiums, and daycare costs, as well

as a placement change for the children. Additionally, Michael sought to prevent Suzanne from unilaterally altering the placement schedule when conflicts arose with the children's extracurricular activities, an issue that would continue to raise hackles in the ensuing years. ¶ 7.

The family court commissioner, the Honorable Marjorie Schuett, dismissed Michael's motion on January 9, 2007, on the ground that there had been no substantial change in circumstances since the entry of the earlier child support order. Michael sought a de novo hearing before the circuit court, and Suzanne responded by seeking attorney fees for Michael's alleged overtrial.² At the hearing, the circuit court allowed the parties ten days to modify or withdraw their motions, after which a guardian ad litem would be appointed.

Michael withdrew his motion for modification and, at the same time, the court granted Michael's attorney's request for leave to withdraw from representation. ¶ 8. In July 2007, Commissioner Schuett entered another order based on a new stipulation that established Michael's monthly child support obligation of \$1,203. Even before the actual entry of that second comprehensive order, Michael sought a de novo review, and soon thereafter, he again moved to revise physical placement and to modify his support payments.

Additionally, in September 2007, Commissioner Schuett issued an order to show cause regarding remedial contempt for Michael's failure to make medical and daycare payments, as well as other various payments owed to Suzanne under the July 2007 order. *633 ¶ 9.

In October 2007, Michael again moved to modify his support payments. As the parties prepared for a hearing on the motion in December 2007, he withdrew that motion and the parties entered into another comprehensive stipulation, which ostensibly resolved all outstanding issues between them.

On January 7, 2008, the court entered an order based on that stipulation. The stipulation and order included a reaffirmation of Michael's obligation to pay \$1,203 per month for child support, which the parties agreed "shall be the minimum amount due for a period of no less than thirty-three (33) months from December 11, 2007, and Michael may not file for a reduction in that amount for the full 33 month period." ¶ 10.

As an apparent quid pro quo for Michael agreeing to the unmodifiable floor on child support payments and to make payments accordingly, Suzanne agreed to assume 100 percent of child care costs as of December 2007. Additionally, the parties agreed that Michael could temporarily make decreased payments on his child support arrearages because, as of the date of the stipulation and order, he was working part-time and earning approximately \$11 per hour.

The specifics of the agreement were read into the record at the hearing before the circuit court, and both the parties and their attorneys acknowledged that the terms stated constituted the agreement

of the parties. ¶ 11. Soon after entry of the order, Michael's (new) attorney moved the circuit court to grant leave to withdraw as Michael's counsel, which the court granted.

The record then shows more than a year-and-a-half hiatus from litigation between the parties, until June 2009. At that time, Michael sought an order for contempt against Suzanne, on grounds that Suzanne had failed to comply with the previous court orders *634 regarding shared placement, decision-making authority, and previously adjudicated childcare costs. At the same time, Michael also sought a reduction in his child support payments.³ ¶ 12.

This recommencement of litigation between the parties in June 2009 marks the beginning of the events directly giving rise to this appeal. In response to Michael's motions, Suzanne countered with a flurry of motions of her own, including motions for contempt, to modify the judgment regarding extracurricular activities, and to dismiss Michael's motion to reduce child support payments.

On the eve of the hearing on the various motions, the parties negotiated and ultimately rescheduled the hearing before Commissioner Schuett for September 1, 2009. At the September 1 hearing, Commissioner Schuett denied Michael's motions; Michael sought de novo review in the circuit court. ¶ 13.

On September 23, 2009, the circuit court denied Michael's motion to hold Suzanne in contempt of court, denied Michael's motion to modify his support obligations and held Michael in contempt for his failure to comply with the court's previous orders regarding payment of child support, healthcare costs and past due childcare costs.

The court also concluded that Michael was equitably estopped from seeking a reduction in his support payments because allowing such modification would "unravel" the parties' stipulation of December 2007. Michael appealed and the court of appeals certified the appeal to this court, which certification we accepted. *635II. DISCUSSION A. Standard of Review ¶ 14.

The questions on review are: (1) whether the December 2007 stipulation and order establishing unmodifiable minimum child support payments for 33 months violate public policy, and (2) whether the circuit court erred when it estopped Michael from seeking modification of his child support payments, based on the parties' agreement that was incorporated into a court order.

If a trial court's decision to apply estoppel would violate public policy a reviewing court must reverse that decision as an erroneous exercise of discretion. See *King v. King*, 224 Wis. 2d 235, 248, 590 N.W.2d 480 (1999).

The determination of whether equitable estoppel may be applied to an uncontested set of facts is a question of law that we review independently of the previous court decision.⁴ *Randy A.J. v. Norma I.J.*, 2004 WI 41, ¶ 12, 270 Wis. 2d 384, 677 N.W.2d 630. Where the circuit court has

examined the relevant facts and concluded that the elements of estoppel are satisfied, the decision to grant equitable relief is within the court's discretion.

See *Affordable Erecting, Inc. v. Neosho Trompler, Inc.*, 2006 WI 67, ¶ 21, 291 Wis. 2d 259, 715 N.W.2d 620. B. Child Support Stipulations Generally ¶ 15. The court of appeals noted in its certification that the case law applicable to unmodifiable child support stipulations could be read as conflicting. Accordingly, the court of appeals requested clarification to ensure proper application of public policy when examining the enforceability of child support stipulations.

See *May v. May*, No. 2010AP177, 2011 WL 51579, at *1 (Wis. Ct. App. Jan. 6, 2011). To clarify the applicable public policy concerns, we examine the relevant cases from both this court and the court of appeals. ¶ 16. We begin with an examination of the case that Michael found so troubling that he requested it be overruled, *Honore v. Honore*, 149 Wis. 2d 512, 439 N.W.2d 827 (Ct.

App. 1989). In *Honore*, the court of appeals held that a stipulation that one parent would continue to pay a certain minimum amount in child support, notwithstanding any changes in income or other finances, was not contrary to public policy. *Id.* at 516-18.

The court of appeals relied on the parties' explicit agreement that a reduction in the payor's income would not alter the payor's child support obligation. *Id.* at 516-17. In so doing, the parties stipulated that a decline in the payor's "income or other financial factors" would not constitute cause to reduce child support, even though such a change would otherwise permit, but not obligate, a court to reduce the support obligations.

Id. at 514; see also Wis. Stat. § 767.32 (1985-86). ¶ 17. Under *Honoré*, then, parties are generally free to enter into stipulations governing the minimum amount due for child support, and a circuit court that approves such stipulations by incorporating them into its order will not be reversed to the extent that the order comports with existing law and public policy.

We have recently reaffirmed this principle in *Frisch v. Henrichs*, 2007 WI 102, ¶ 75, 304 Wis. 2d 1, 736 N.W.2d 85. ¶ 18. In *Frisch*, we explained that "we are sensitive to the importance and prevalence of stipulations in helping families going through difficult and litigious divorces and curbing disagreements [between] the parties.

The ability to contract is fundamental to our legal system and may aid parties in settling their divorces more amicably." *Id.* We also stated in *Frisch* that, notwithstanding the rights of parents to stipulate for child support, "the child's best interests are paramount," suggesting that where a conflict between the two values exists, the child's best interests must prevail.

Id. ¶ 19. Even prior to the court of appeals' decision in *Honoré*, we have long recognized that the best interests of the child are the primary guidepost for courts considering approval and modification of orders for child support.

As early as 1970, in *Bliwas v. Bliwas*, 47 Wis. 2d 635, 178 N.W.2d 35 (1970), we recognized that a court is empowered to make such orders and modifications as the best interests of the child may require. *Id.* at 639. We also recognized that a court exercising its equitable authority could issue certain child support orders based on the stipulation of the parties, even though the provisions to which the parties stipulated could not be imposed absent the agreement.

See *id.* at 638-40. ¶ 20. In *Bliwas*, the payor father had agreed to pay child support for one of the children until that child reached age 21 in exchange for reduced support payments during the child's minority. See *id.* at 640.

We concluded that the stipulation did not violate public policy and that it was enforceable between the parties. *Id.* at 638-41. Our conclusion rested not solely on a theory of private contract or inherent authority of the court, but on equitable principles that required that "a party who procures or consents to the entry of [a] decree is estopped to question its validity, especially where he has obtained a benefit from it." *Id.* at 640 (citation omitted). *638 ¶ 21.

Soon after *Bliwas*, we held in *Severson v. Severson*, 71 Wis. 2d 382, 238 N.W.2d 116 (1976), that an automatic reduction clause in a child support stipulation (reducing the father's payments by 20 percent upon each of five children's reaching the age of majority) did not violate public policy. *Id.* at 387-88. Therein, we again held that where the parties reached an agreement on a particular provision in the child support stipulation, and where that provision did not, either on its face or in effect, interfere with the best interests of the children, the courts would not excuse enforcement of the provision.

See *id.* at 386-88. ¶ 22. In *Rintelman v. Rintelman*, 118 Wis. 2d 587, 348 N.W.2d 498 (1984), we upheld a stipulation to continue spousal maintenance payments after the payee wife's remarriage, on the ground that she had relied on the agreement and, therefore, the payor husband was estopped from denying his continuing obligation.

We stated in *Rintelman* that no quid pro quo was necessary to demonstrate the applicability of estoppel; rather, in the context of spousal maintenance and child support: [A]ll that need be shown to constitute an estoppel is that both parties entered into the stipulation freely and knowingly, that the overall settlement is fair and equitable and not illegal or against public policy, and that one party subsequently seeks to be released from the terms of the court order on the grounds that the court could not have entered the order it did without the parties' agreement.

Id. at 596. ¶ 23. Accordingly, we recognize that Wisconsin courts have long utilized their equitable authority to uphold stipulations governing child support, and that *639 such stipulations should be upheld unless doing so would threaten the best interests of the children.

The cases in which binding support agreements have been invalidated typically have involved factual scenarios in which enforcement of the agreements would have run afoul of the best

interests of the child. These specific scenarios, however, have not materially altered the underlying rule of law where stipulations are reviewed to determine whether they are in the best interests of the child.

This policy continues to guide Wisconsin courts in their evaluations of child support agreements. See, e.g., *Severson*, 71 Wis. 2d at 387-88, *Bliwas*, 47 Wis. 2d at 639-40. ¶ 24. The prototypical case in which an unmodifiable agreement has been invalidated involves a stipulation limiting the ability of a parent receiving child support to act in the best interests of the children.

For example, in *Ondrasek v. Tenneson*, 158 Wis. 2d 690, 462 N.W.2d 915 (Ct. App. 1990), the court of appeals invalidated a stipulation that provided for "periodic payments," but barred any other payments designated as "child support." *Id.* at 693-94.

The court determined that the stipulation could have been read either as a complete waiver of child support payments or as establishing an unmodifiable ceiling on the payor's support obligations. *Id.* at 694. ¶ 25. Under either interpretation, the court concluded that the parties' stipulation impermissibly precluded reconsideration of support obligations when one child's placement changed from primarily living with the father to primarily with the mother.

See *id.* Therefore, the stipulation threatened to leave unaddressed the changing needs of the children. *Id.* at 696-97. Accordingly, *Ondrasek* has been cited for the rule that a child support stipulation that would prevent a payee spouse from seeking an upward modification upon the occurrence of a substantial change in circumstances is per se invalid as interfering with the best interests of the child.

See *id.*; see also *Wood v. Propeck*, 2007 WI App 24, ¶ 21, 299 Wis. 2d 470, 728 N.W.2d 757. ¶ 26. In addition to affirming the payee spouse's ability to seek modifications in the best interests of the child, we also acknowledge the principle that a payor spouse has a responsibility to act in the best interests of the child.

Therefore, where a child support stipulation would hinder the payor spouse's ability to protect the best interests of the child, such stipulation will be invalidated on the same grounds as would a stipulation that hinders the payee's ability to protect the children. See *Krieman v. Goldberg*, 214 Wis. 2d 163, 177, 571 N.W.2d 425 (Ct. App. 1997). ¶ 27.

In *Krieman*, the court of appeals concluded that a child support stipulation that imposed an unmodifiable floor on the payor spouse's payment obligations without any durational limit would not be upheld. See *id.* at 178.

The child support stipulation in *Krieman* provided that "neither party shall under any circumstances have the right to petition the court for a modification of the child support provided for herein." *Id.* at 167. The court of appeals invalidated the stipulation, reasoning that the

agreement's lack of a durational limit threatened to deprive the payor of the opportunity to seek modification upon a substantial change in circumstances, even when such change may have negatively affected the best interests of his children.

Id. at 175-76. ¶ 28. A central component in determining whether an unmodifiable child support floor is enforceable is the duration of the provision, as the court of appeals has recognized. See *Wood*, 299 Wis. 2d 470, ¶ 20; *Krieman*, 214 Wis. 2d at 175-76; *Honore*, 149 Wis. 2d at 513-14.

In *Honore*, for example, the court of appeals concluded that an approximately three-year unmodifiable floor did not violate public policy, even where the payor asserted a decrease in his income during that time. *Honore*, 149 Wis. 2d at 513-14. Conversely, in *Krieman*, the court concluded that a stipulation without any durational limit was unenforceable on public policy grounds.

Krieman, 214 Wis. 2d at 165. Therefore, a child support obligation that is indefinitely unmodifiable will likely violate public policy. See *id.* at 175-78. ¶ 29. However, a durational limit will not necessarily save a child support stipulation.

In *Wood*, a stipulation that prohibited either party from seeking modification of child support obligations for seven years absent "catastrophic circumstances" was held to violate public policy. See *Wood*, 299 Wis. 2d 470, ¶ 1.

The court of appeals determined that the stipulation would have prevented the payee mother from obtaining a modification even after the children's placement changed from shared to primarily with the mother. See *id.*, ¶ 11 (citing Wis. Stat. § 767.32(1)(a) (2003-04) (later renumbered to Wis. Stat. § 767.59(H) by 2005 Wis. Act 443 §§ 148-59)).

The court of appeals concluded that even though the parties' stipulation was intended to be fair to both spouses by imposing a bilateral limitation, the stipulation would have interfered with the court's ability to make orders in the best interests of the children. *Id.*, ¶¶ 14, 18. ¶ 30.

In *Frisch*, we concluded that a four-year moratorium on child support litigation violated public policy because such a limitation would have imposed an upper limit on the payee's ability to secure support for the children. See *Frisch*, 304 Wis. 2d 1, ¶ 67. Such a ceiling would have deprived the payee of the ability to seek a modification even upon a showing of a substantial change in circumstances necessitating an increase to protect the best interests of the children.

Id., ¶ 74. In *Frisch*, we also stated that although the four-year unmodifiable ceiling violated public policy, no such prohibition existed for unmodifiable floors when they are limited in duration. *Id.*, ¶ 74 n.23. Specifically, we reasoned that "[stipulating to a minimum amount for a limited period of

time does not violate public policy because it ensures that a certain amount of child support is received, which is in the best interests of the children."

Id. ¶ 31. Soon after our decision in Frisch, the court of appeals decided *Jalovec v. Jalovec*, 2007 WI App 206, 305 Wis. 2d 467, 739 N.W.2d 834, which involved yet another four-year moratorium on child support litigation.

In *Jalovec*, however, the challenge implicated what could be argued to be an unmodifiable floor on child support, because the payor father sought to decrease his payment obligations after taking primary placement of one of the children. See *id.*, ¶¶ 6, 19. Relying on our statement in *Frisch* that a four-year ceiling was contrary to public policy, the court of appeals held that the four-year moratorium on requesting a support reduction was also contrary to public policy.

Id., ¶ 19. It was this reasoning that prompted the court of appeals in the instant case to seek clarification of the question of when a limited duration, unmodifiable floor for child support violates public policy. See *May*, 2011WL 51579, at *1, 4. ¶ 32.

In addition to the relevant case law, we also examine the statutory bases upon which child support obligations are founded. Of importance to this case is *643Wis. Stat. § 767.59(1f), which guides courts' decisions about whether to modify child support orders in two separate ways.

On its face, § 767.59(1f) provides courts with examples of factual scenarios that may constitute "substantial changes in circumstances" that are sufficient to modify orders for child support. Some of those scenarios, listed in § 767.59(1f)(b), give rise to a rebut-table presumption that a substantial change has occurred.

For example," [c]ommencement of receipt of aid to families with dependent children" sets up a rebut-table presumption of a substantial change under § 767.59(1f)(b)l. Other circumstances, for example those listed in paragraph (c), relate possible instances in which a court may find that such a change has occurred.

Therefore, these provisions signal to courts and litigants when modification to child support orders may be proper. ¶ 33. Moreover, Wis. Stat. § 767.59(1f) also provides some preliminary guidance to parties seeking to enter into agreements to govern child support.

In particular, § 767.59(1f)(b)2. provides that after the passage of 33 months, a rebuttable presumption arises that a substantial change in circumstances has occurred that warrants a revision of the previous child support order, unless the order is expressed as a percentage of the payor's income.

The legislature's inclusion of a period of time giving rise to a rebuttable presumption conveys that until the provided time period is reached, the passage of time, without more, may not support the conclusion that a substantial change in circumstances has occurred. Notably, this legislative policy

comports with decisions of this court and the court of appeals examining durational limits in child support stipulations. *644¶ 34.

From the foregoing, we conclude that there exists a framework governing child support stipulations and orders. First, ceilings on child support payments are presumed to be invalid. See Frisch, 304 Wis. 2d 1, ¶ 74; see also Ondrasek, 158 Wis. 2d at 694-97.

The foundation for this rule is long-established: the best interests of the child require that a payee spouse cannot be deprived of the ability to seek a modification in child support. See Ondrasek, 158 Wis. 2d at 694-97. ¶ 35.

Second, an unmodifiable floor on child support payments that is not limited in duration, e.g., Krieman, 214 Wis. 2d at 178, or that has an excessively long duration, e.g., Wood, 299 Wis. 2d 470, ¶¶ 12-14, may violate public policy. Just as payees have a duty, and therefore must have the ability, to protect the best interests of the children, payors have a duty, and therefore also must have the ability, to protect the best interests of their children.

Stated otherwise, an unmodifiable floor of excessive duration has the potential to impose undue hardship on the payor parent's ability to provide for the best interests of the children, thereby negatively affecting the children's relationships with that parent. See Krieman, 214 Wis. 2d at 177-78.

However, we decline to adopt a rule that unmodifiable floors that are limited in duration are invalid per se. See Frisch, 304 Wis. 2d 1, ¶ 74 n.23. Agreements that provide an unmodifiable child support floor for a limited period of time often are created to lessen litigation between the parties. Repetitive litigation and the tension it creates are not in the best interests of children. ¶ 36.

Third, where the parties to a child support order have entered into a stipulation in regard to child *645support for a limited period of time that the court has adopted, courts will attempt to give effect to the parties' intentions where the stipulation was entered into freely and knowingly, was fair and equitable when entered into, and is not illegal or violative of public policy.

See id., ¶ 68. In this context, a court's review typically will consider the doctrine of equitable estoppel, by which a party may be precluded from challenging an agreement when the elements of estoppel set forth in Rintelman are satisfied. See Rintelman, 118 Wis. 2d at 596 (stating elements of estoppel as (1) both parties entered into the agreement freely and knowingly; (2) overall, the settlement is fair and equitable; and (3) the agreement is not illegal or violative of public policy).

In the event that the elements of estoppel are met, courts have the equitable authority to decide whether to hold the parties to their bargain or to release them from it. See Jalovec, 305 Wis. 2d 467, ¶ 11. ¶ 37. Finally, courts retain the equitable power to consider circumstances in existence

when the stipulation is challenged that were unforeseen by the parties when they entered into the stipulation if those circumstances adversely affect the best interests of the child.

This is so because the protection of children and intervening in their best interests constitute long-standing grounds for exercising the equity jurisdiction of the courts. See *Dovi v. Dovi*, 245 Wis. 50, 57, 13 N.W.2d 585 (1944).

Accordingly, if presented with the circumstances described above when a party seeks to enforce such an agreement and the other party seeks to modify the judgment that incorporates the agreement, courts retain the equitable authority and discretion to refuse to uphold all child support stipulations, even those that under principles of estoppel would otherwise be enforceable. *646C.

Application ¶ 38. The circuit court concluded that the Mays' stipulation and the facts of this case required that Michael be held to his contractual and judicial child support obligations. The court determined that the elements of estoppel were met, and that there were no circumstances that would warrant relief from the parties' agreement.

As discussed below, we reach the same conclusion. ¶ 39. Our review is two-fold: we first examine the facts as found by the circuit court to determine whether the elements of estoppel are satisfied as a matter of law; if we conclude that they are, we examine the circuit court's decision to apply estoppel to determine whether doing so was an erroneous exercise of discretion.

We will affirm the circuit court if it examined the relevant facts, applied the proper legal standard and, using a demonstrated rational process, reached a reasonable conclusion. See *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶ 29, 326 Wis. 2d 640, 785 N.W.2d 493.

Accordingly, we begin by examining the elements of estoppel in light of the facts of this case. ¶ 40. In the context of child support stipulations, the first element of estoppel asks whether Michael and Suzanne freely and knowingly entered into the support stipulation. See *Frisch*, 304 Wis. 2d at 1, ¶ 68. Judge Sumi conducted a careful examination to determine each party's understanding and acceptance of the terms of the December 2007 stipulation.

Her examination demonstrates that the parties were assisted by skilled counsel; that the terms of the stipulation were clearly expressed; and that both parties were aware of and in agreement on those terms. We therefore agree with the *647circuit court that both parties freely and knowingly entered into the support stipulation. ¶ 41.

The second element of estoppel requires that the stipulation was fair and equitable. *Id.* At the outset, we note the apparent incongruity in Michael's stipulation to pay \$1,200 per month when his monthly income from part-time employment at the time of the stipulation ranged between \$1,600 and \$1,800.

We also note that when Michael became unemployed between the time of the stipulation and the time of his challenge to it in mid-2009, his income was practically the same as it had been at the time of the December 2007 stipulation. ¶ 42. At first blush, Michael's agreement to pay approximately 75 percent of his income seems high. Upon further examination, though, we are satisfied that the stipulation was both fair and equitable because it held Michael, who had previously earned \$72,000 per year, to his obligation to support his children.

The stipulation's provision that support could not be reduced for 33 months demonstrates that the parties were aware of historical fluctuations in Michael's income,⁵ as well as his history of non-payment and non-compliance with prior orders.

In addition, the stipulation and order *648exhibit a quid pro quo: Michael was obligated to comply with the minimum payment schedule in exchange for modification of his then-existing child support obligations, including substantial arrearages.

Therefore, we conclude that the parties' stipulation was fair and equitable. ¶ 43. The third element of estoppel is whether the agreement was illegal or contrary to public policy. *Id.*, ¶ 68. The parties' stipulation for child support was not illegal; such agreements are provided for by Wis. Stat. § 767.511(1) and Wis. Stat. § 767.59(2s). Rather, the crux of Michael's argument is that the stipulation violates public policy.

As discussed in our examination of the case law, a stipulation that sets an unmodifiable floor for child support for a limited term does not necessarily run afoul of the public policy of protecting the best interests of the child. *Id.* ¶ 44.

As an initial policy matter, we recognize that this stipulation does not implicate the prohibition on unmodifiable child support ceilings. See *id.*, ¶ 74. Instead, Michael asserts that the 33-month unmodifiable floor on his support payments suffers from the same infirmities as do ceilings.

As suggested in our preceding discussion, we have located no support for the conclusion that the 33-month unmodifiable floor is a per se violation of the policy of protecting the best interests of the child. ¶ 45. Contrary to the purpose of a child support ceiling, a floor setting the minimum amount of child support payments does not threaten to deprive a payee parent of the ability to seek more support for his or her child.

This is important because the payee is the parent that a court and the parties have determined to be more in need of financial support, as between the two parents, in order to provide for the best interests of the *649child. See, e.g., Wis. Stat. § 767.511, Wis. Admin. Code § DCF ch. 150 (prefatory note).

Therefore, when a floor for child support payments is implemented and enforced, there is no fear that a payee parent will be hindered in his or her ability to protect the best interests of the child.

The concerns discussed in cases such as *Wood*, 299 Wis. 2d 470, ¶ 18, or *Ondrasek*, 158 Wis. 2d at 696-97, are not relevant here, where Suzanne, as the payee, was free to seek an upward modification if the need presented itself. ¶ 46.

Next, we note that there exists some potential confusion regarding the permissible duration of an unmodifiable child support floor. Without rejecting Honoré's determination that a three-year stipulation was acceptable, we reaffirm our deference to the legislature's presumptive durational limit for changed circumstances, 33 months. See Wis. Stat. § 767.59(1f)(b)2.

Beyond the legislature's rebuttable presumption of 33 months, case law suggests that stipulations lasting more than four years could be too lengthy. See *Frisch*, 304 Wis. 2d 1, ¶ 74. So, too, stipulations that are not related to a point in time that reasonably would support a reevaluation of the parties' support obligations and needs may not meet with the approval of the circuit court.

See *Wood*, 299 Wis. 2d 470, ¶ 20. Section 767.59(1f)(b)2.'s rebuttable presumption that arises at 33 months represents what the legislature has determined is a reasonable time to reconsider support. ¶ 47. From these principles, we conclude that the Mays' 33-month stipulation did not violate public policy. Where the parties entered into the stipulation freely and knowingly, where the overall agreement is fair and equitable, and where the stipulation is not violative of public policy, a court should be cautious when asked to allow one of the parties to disavow the agreement.^{*650} Although courts retain their equitable power to modify child support payments notwithstanding the parties' agreement to an "unmodifiable" floor, due to the absence in this case of unforeseen circumstances that negatively affect the best interests of the children, the agreement and order do not violate public policy.⁶ Accordingly, we agree with the circuit court and conclude that the final element of estoppel is satisfied. ¶ 48.

Our analysis turns, then, to whether the circuit court erroneously exercised its discretion when it held Michael estopped from challenging the stipulation within the 33-month period of its existence. See *King*, 224 Wis. 2d at 248.

We conclude that the circuit court did not erroneously exercise its discretion: the court examined the relevant facts, applied proper legal standards, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *Miller*, 326 Wis. 2d 640, ¶ 29.

Therefore, we affirm the circuit court's decision to apply equitable estoppel to preclude Michael's challenge to the Mays' stipulation by modifying the order that incorporates it. ¶ 49. As a final matter, we acknowledge Michael's argument that the passage of time and the development of more holistic notions of post-divorce family structure warrant overruling the court of appeals' decision in *Honore*.

Michael argues that the shift in policy, as expressed in the relevant administrative code sections, see, e.g., Wis. Admin. Code § DCF ch. 150, support his argument that the financial integrity of the

payor parent has become a greater priority than ever before, and that that policy supports his attempt to reduce his *651 payments.

Although Michael seems to argue that the policies of the late-1980s are of a bygone era, we nonetheless continue to view the Honore court's analysis and conclusion as persuasive. In Frisch, we referred to Honore with approval, and therefore, even if times have changed since 1989 when Honore was decided, we do not accept the argument that such changes justify our rejection of the equitable principles enunciated in Honoré.

III. CONCLUSION ¶ 50. We conclude that the Mays' stipulation and order for child support is enforceable. The parties freely and knowingly entered into the stipulation at issue and the terms of the stipulation were fair and equitable. Furthermore, the agreement is not contrary to public policy because the circuit court retains its equitable power to consider circumstances in existence when the stipulation was challenged that were unforeseen by the parties when they entered into the agreement if those circumstances adversely affect the best interests of the children.

Michael has not demonstrated the existence of such circumstances. Accordingly, we affirm the decision of the circuit court. By the Court. The order of the circuit court is affirmed. All subsequent references to the Wisconsin Statutes are to the 2007-08 version unless otherwise indicated. Overtrial is a family law doctrine that courts employ when one party's approach to litigation is unreasonable and causes the other party to incur unnecessary expense.

Frisch v. Henrichs, 2007 WI 102, ¶ 2 n.1, 304 Wis. 2d 1, 736 N.W.2d 85. When a finding of overtrial is made, a court may order that the offending party pay a larger part of the attorney fees of the other party. Id. at ¶ 2.

The record shows that at the time of his June 2009 motions, Michael had recently lost the job he had held since approximately May 2008, as a result of his position having been "eliminated." The record also shows that during that period of employment, Michael failed to inform Suzanne of his increase in salary, as required by earlier stipulations and orders.

Although the parties dispute various facts relating to each other's support or care for the children, the existence of the December 2007 stipulation and the facts that led to that stipulation are not in dispute. The record shows that less than six months after entering the stipulation, and nearly one year before his challenge, Michael once again found employment in his field earning approximately \$72,000 per year.

The record also shows that Michael failed to report this substantial change in his income to Suzanne as required by the December 2007 stipulation. Although these facts could not retroactively support a finding that the stipulation was "fair," this behavior does, according to the record, demonstrate the continuation of a pattern of obstreperousness toward multiple child support orders during the years following the parties' divorce.

From that pattern, there is ample support for the conclusion that the December 2007 stipulation was, overall, fair and equitable. Indeed, Michael has not pointed to any changed circumstances since the entry of the 2007 order.

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